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February 19, 2016

Wisconsin Supreme Court
Attn: Clerk of the Supreme Court
110 East Main Street, Suite 215 PO Box 1688
Madison WI 53701-1688

Re: Rules Petition 14-03 Comments

Honorable Justices of the Supreme Court:

Legal Action of Wisconsin provides representation to indigent individuals in civil cases in thirty-nine Wisconsin counties from Green Bay to La Crosse and south to the Illinois border. Legal Action also operates the largest pro bono project in the state for extended representation of clients. We welcome mandatory e-filing, for reasons I will explain at the end of this letter.

The waiver of electronic filing fees for indigent parties needs to be expressly adopted in any final order. In this, I echo the comments of Marsha Mansfield and Judge Gramling. While I appreciate Judge Wirtz's assurances, I do not believe his comments resolve the issue, because they rely upon the discretion of the Director, and that discretion can be applied differently in the future. Wis. Stat. § 758.19 (4m) authorizes the creation of an e-filing fee and Wis. Stat. § 814.29 (1) authorizes the waiver of filing fees. The petition should make clear that e-filing fees are included as a waivable fee under § 814.29 (1), if the intent of the petition is to allow for waiver for indigent parties.

This can be accomplished by two changes to the amended petition:

- 1) Insert "including electronic filing fees" in the second sentence of (7) (b) after the phrase "waiver of filing fees". The sentence would read: "The user may submit a petition or motion for waiver of filing fees, including electronic filing fees, under s. 814.29(1), using a form provided by the court for that purpose." and
- 2) Modify the last sentence of (7) (c) to read: "The electronic filing fee shall not be waived by the court except pursuant to Wis. Stat. § 814.29 (1) or in accordance with policies set by the director." This would allow indigent parties to rely on § 814.29 (1), while policies set by the Director can accommodate the concerns of governmental units, such as child support offices.

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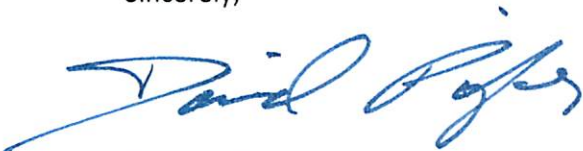


My concern is that access to justice will be denied to indigent parties in the future if the above changes are not made, and then the Director shifts to a more restrictive policy. A decision to require all e-filers to pay an access fee, regardless of indigence, would have wide ranging ramifications. Indigent plaintiffs may forgo filing a case because they do not have the e-filing fee and indigent defendants would be unable to file answers for lack of the fee. Legal aid organizations would have to limit their court filings because of a lack of resources with which to pay an indigent party's fee. An unintended result may be that the effort to increase pro bono and limited scope representation will stall because of a party's inability to pay the fee or the attorney's unwillingness to absorb the fee as part of the representation. Why create this uncertainty by leaving the issue unresolved? It would be better to resolve the issue now.

The language in (7) (b) will create confusion regarding the date a document is deemed filed when accompanied by a fee waiver request. The amended petition resolves the biggest issue by allowing the original submission date to be the date for filing purposes, when accompanied by a fee waiver request that is granted. What happens if the waiver is denied? There is no provision for time to pay the fee. For example, a defendant is running out of time to file an answer, she retains a lawyer to file the answer on the last day, a fee waiver request is filed with the answer because both the defendant and her lawyer believe she is eligible for the waiver, but the court disagrees and denies the waiver. The court clerk rejects the filing. This is not currently a problem because no fee is required for a represented party to file an answer. Perhaps the attorney could prepare the answer and have the defendant file it pro se, but this is jury-rigging a solution that lawyers and their clients should not be expected to do. The better solution is to provide a window of time for paying the fee when a waiver is denied.

I support the move to mandatory e-filing, assuming the fee waiver issue is resolved. Legal Action attorneys file in the Circuit Courts of 39 counties, and e-filing will improve that process and save time. Filing in rural counties, with deadlines looming, will be much easier. Several of our attorneys are participating as voluntary e-filers, and they have found that the process works reasonably well. Any new system will have glitches, but courts have been accommodating when problems occurred. For example, in one recent instance a motion was not scanned by the clerk's office, and in another the filing was rejected because no filing fee was paid, even though a fee waiver was included with the filing. Both problems were promptly resolved when brought to the attention of court personnel. While the system will have growing pains, our experience is that they will be relatively minor and easy to fix.

Sincerely,



David A. Pifer
Executive Director

DAP:cj